(Spl.-H.C.A.S.,C.D.,78-e)

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF BOMBAY AT GOA
APPELLATE SIDE

CRIMINAL MISCELLANEOUS APPLICATION NO. 150 OF 2004

Office Note, Office Memoranda of Quorum, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

Mr. Arun Bras De Sa, Advocate for the Applicant.

Mr. P. K. Gude, Advocate for the Respondents.

CORAM : N. A. BRITTO, J.

DATE : 2ND SEPTEMBER,2004.

P.C.:

Heard Mr. Arun Bras De Sa, learned Counsel, on behalf of the Applicant and Mr. P. K. Gude, learned Counsel on behalf of the Respondents.

The Applicant is the Complainant in Criminal Case No.146/P/2001/D. The said complaint was filed by her against two Accused, the second Accused being her sister and the first Accused being her sister's son, under

Sections 323, 352, 504 r/w 34 of the Indian Penal Code.

The said complaint came to be dismissed and the Accused acquitted, in the absence of the Complainant and/or her Advocate on 9th January, 2004.

By the present application, the Applicant/Complainant seeks to condone a delay of 62 days.

Mr. Arun Bras De Sa, learned Counsel submits that the Complainant is an old lady who was suffering from arthritis, hypertension and ischamic heart disease and, therefore, could not file leave to appeal in time. The other reasons to condone the delay are set out in the application. The application has been strongly opposed on behalf of the Accused by submitting that the medical certificates which have been filed in support of the application for condonation of delay are vague and do not show that the Applicant was prevented from filing

an Appeal before the expiry of the period of limitation.

The application of the Applicant has been supported only by the Affidavit of the Applicant herself although many of the facts stated by her are attributable to her lawyers at Margao or Panaji.

As rightly pointed out on behalf of the Respondents, the medical certificates submitted on behalf of the Complainant only show that she has been under treatment for degenerative arthritis, hypertension and ischamic heart disease, ailments which are generally associated with old age. The said certificates do not in terms show that the Applicant was prevented from attending to the matter of filing the Appeal either from 5th February, 2004 to 28th March, 2004 or from 11th April, 2004 to 10th May, 2004. One did not accept as a gospel truth whatever has been stated by the Applicant herself. Her Affidavit is not

convincing. The Applicant has chosen not to file the Affidavits of the Advocates who gave advise to her. The application lacks credibility.

I find there is no merit in the application for condonation of delay. Therefore, the same is hereby dismissed.

N. A. BRITTO, J.

RD.